Supreme Court, U. S.
FILED
FEB 1 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-965

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED
SUSIE IVY and I. GOODMAN COHEN,
Co-Administrators,

Petitioners,

v

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
E. David Brockman
Assistant Attorneys General

Dated: January 27, 1978

PRINTED BY [illegible]

TABLE OF CONTENTS

	Page
Index of Authorities	ii
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	2
Argument	
I. The Petition Presents No Issue Of Sufficient Importance To Warrant Review By This Court	3
II. Accumulated Social Security Benefits Are A Non-Exempt General Asset Of The Decedent's Estate And Subject To The Valid Claims Of Creditors Under State Law	5
A. The Legislative History Of The Social Security Act And Judicial Interpretations Of The Act Support The Conclusion That The Chief Concern Of Congress Was To Provide For The Needs Of Living Recipients	5
B. *Philpott* v *Essex County Welfare Board*, 409 US 413 (1973) Does Not Control The Disposition Of This Case	13
Conclusion and Relief Sought	19

INDEX OF AUTHORITIES

Page

Beers v Federal Security Administrator,
172 F2d 34, 36 (CA 2, 1949) 16-17

Butler v Fleming, 288 F2d 591 (CA 5, 1961) 12

Coy v Folsom, 228 F2d 276 (CA 3, 1955) 12

Delno v Celebrezze, 347 F2d 159, 161 (CA 9, 1965) 12-13

Helvering v Davis, 301 US 619; 57 S Ct 904;
81 L Ed 1314 (1937) 9-10

Hayes v Celebrezze, 311 F2d 747 (CA 5, 1963) 12

Hill v State of Florida ex rel Watson, 325 US 538;
65 S Ct 1373; 89 L Ed 1782 (1944) 4

In re Buxton's Estate, 246 Wis 97, 16 NW2d 399 (1944) 18

In re Vary Estate, 65 Mich App 447;
237 NW2d 498 (1975) 1

In re Vary Estate, 401 Mich 340; 258 NW2d 11 (1977) 1, 4, 15

Philpott v Essex County Welfare Board,
409 US 413 (1973) 4, 13, 14, 16, 17

Social Security Board v Nierotko, 327 US 358, 364;
66 S Ct 637; 90 L Ed 718 (1946) 10

Sola Electric Co v Jefferson Electric Co, 317 US 173;
63 S Ct 172; 87 L Ed 165 (1942) 4

State v Monaco, 81 NJ Super 448, 195 A2d 910 (1963) 18

State v Wendt, 94 Ohio App 440, 116 NE2d 30 (1953) 18

United States v Silk, 331 US 704, 710-711;
67 S Ct 1463; 91 L Ed 1757 (1947) 10-11

Page

MCLA 330.27; MSA 14.817 ..... 3, 4

MCLA 330.1001; MSA 14.800(1) 3

38 USC § 3101 18

42 USC § 407 .....3, 4, 7, 9, 13, 14, 16, 17, 18, 19

74th Congress, First Session, House of Representatives
Report No. 615, April 5, 1935 6-7

74th Congress, First Session, Senate Report No. 628, p 2,
May 13, 1935 5-6

76th Congress, First Session, House of Representatives
Report No. 728 (1939) 8-9

76th Congress, First Session,
Senate Report No. 734 (1939) 8-9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-945

IN THE MATTER OF THE ESTATE OF
JEANETTE VARY, DECEASED
SUSIE IVY and I. GOODMAN COHEN,
Co-Administrators,

Petitioners,

v

STATE OF MICHIGAN, DEPARTMENT OF
THE TREASURY, REVENUE DIVISION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The unreported opinion and order of the probate court exempting the social security funds from the claim of the State of Michigan was filed on June 22, 1973, and is printed at Petitioner's Appendix pp 41-44. The unreported opinion of the circuit court, sitting as an appellate court, affirming the decision of the trial court was filed on May 1, 1974, and is printed at Petitioner's Appendix pp 44-48. The Michigan Court of Appeals reversed the circuit court, *In re Vary Estate*, 65 Mich App 447; 237 NW2d 498 (1975), (Petitioner's Appendix pp 49-54), and the Supreme Court of Michigan affirmed, *In re Vary Estate*, 401 Mich 340; 258 NW2d 11 (1977) (Petitioner's Appendix pp 54-73).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for a Writ of Certiorari.

QUESTIONS PRESENTED

I.

Does the Petition present any issue of sufficient impact or importance to warrant review by this Court?

II.

Are accumulated social security benefits a non-exempt general asset of a decedent's estate and subject to the valid claims of creditors under state law?

STATUTES INVOLVED

The Petition adequately sets forth the statutes involved.

STATEMENT OF THE CASE

The Petition contains an adequate statement of the case.

ARGUMENT

I.

THE PETITION PRESENTS NO ISSUE OF SUFFICIENT IMPORTANCE TO WARRANT REVIEW BY THIS COURT.

In the "Question Presented for Review" the Petition (p 2) frames the issue in this case as whether a state statute may "override" 42 USC § 407 in violation of the Supremacy Clause of the United States Constitution. Although no statute is cited, Respondent believes Petitioner refers to MCLA 330.27; MSA 14.817 which is quoted on pp 3-6 of the Petition, although the Petition does not indicate that the statute was repealed in 1974 by Michigan's Mental Health Code, MCLA 330.1001, *et seq*; MSA 14.800(1), *et seq*. Respondent respectfully submits that because the challenged statute has been repealed, this case is of limited impact and does not present an issue of sufficient importance to justify granting certiorari.

Furthermore, Respondent respectfully submits that this case does not present a genuine Supremacy Clause issue because Respondent does not allege that any Michigan statute conflicts with or "overrides" 42 USC § 407. Apparently, the only Michigan Statute challenged by Petitioner is MCLA 330.27 which permits the State to petition the probate court to subject the estate to the payment of expenses incurred by the State in the care of the deceased patient. Petitioner has never challenged the validity of this statute or the validity of the State's claim in the instant case, which was allowed by the probate court. See "Statement of the Case," Petition p 7. Their position throughout this litigation has merely been that a portion of the decedent's estate is unavailable for payment of the State's valid claim because of the exemption conferred by 42 USC § 407. Respondent, however, has never alleged

that MCLA 330.27 conflicts with or "overrides" 42 USC § 407, or that 42 USC § 407 is invalid; the State maintains only that the exemption contained in 42 USC § 407 does not apply to this decedent's estate.

Examination of the "Question Presented for Review" in the Petition in this case reveals that it is virtually a verbatim quotation of the question presented in the petition for a writ of certiorari filed in *Philpott* v *Essex Coutny Welfare Board*, 409 US 413 (1973). (This explains the confusing reference to "welfare benefits" contained in the Petitioner's "Question Presented," since the instant case does not involve welfare.) Although *Philpott* may have involved a genuine Supremacy Clause issue because of the conflict between New Jersey's reimbursement statute and 42 USC § 407, the instant case contains no such conflict and even though Petitioner cites *Sola Electric Co* v *Jefferson Electric Co*, 317 US 173; 63 S Ct 172; 87 L Ed 165 (1942), and *Hill* v *State of Florida ex rel Watson*, 325 US 538; 65 S Ct 1373; 89 L Ed 1782 (1944) in support of its Supremacy Clause argument, those cases are inapposite. *Sola* held only that a local rule of estoppel must yield in favor of the Sherman Act's prohibition on price-fixing, and in *Hill* this Court merely held that a state licensing statute was invalid since it interfered with the operation of the National Labor Relations Act. In the instant case, on the other hand, there simply is no conflict between Michigan law and 42 USC § 407, as the Michigan Supreme Court correctly noted, *In re Vary Estate*, *supra*, 401 Mich at 353: "We would not create a conflict where there is none."

Respondent respectfully submits that because there is no genuine Supremacy Clause issue here, because there is no allegation of conflict between state and federal law, and because there is no allegation of invalidity of any state or federal law, the Petition does not present any issue of sufficient importance to warrant review by this Court.

II.

ACCUMULATED SOCIAL SECURITY BENEFITS ARE A NON-EXEMPT GENERAL ASSET OF THE DECEDENT'S ESTATE AND SUBJECT TO THE VALID CLAIMS OF CREDITORS UNDER STATE LAW.

A.

THE LEGISLATIVE HISTORY OF THE SOCIAL SECURITY ACT AND JUDICIAL INTERPRETATION OF THE ACT SUPPORT THE CONCLUSION THAT THE CHIEF CONCERN OF CONGRESS WAS TO PROVIDE FOR THE NEEDS OF LIVING RECIPIENTS.

Contrary to the argument of Petitioner (Petition, pp 37-38), a review of the legislative history of the Social Security Act demonstrates the congressional concern for recipients' needs as the prime force behind enactment of the statute. Prior to this far-reaching enactment, the Senate Finance Committee had been instructed to study the whole aspect of insecurity in our economic life and to make recommendations. (74th Congress, First Session, Senate Report No. 628, p 2, May 13, 1935, Calendar No. 661). The Senate Finance Committee reported the results of its legislative hearings in the above-noted Committee Report. The following excerpts from said Report are illuminating as to the purpose which generated federal old age and survivors insurance benefits, more commonly known as Social Security benefits:

> "During the depression period the country has become keenly conscious of the problem of providing security for aged people who are without adequate means of support. Dependency in old age is a hazard which faces everybody. • • • [p 4]

"• • •

"World experience has demonstrated that the best way to provide for old people who are dependent upon the public for support is through old-age assistance (popularly called 'old-age pensions'). • • • [p 4]

"• • •

"In addition to the increase in the number of the aged, we must anticipate an increase in the aged who will be dependent upon the public for support. This tendency is likely to become more marked during the next decades, since so many of the people who are past middle age have lost both their savings and their employment and are not likely to be able to build up adequate provisions for their old age in the few remaining years of the active period of their lives. • • •" [pp 6-7]

These excerpts indicate that the Senate was concerned with "providing security for aged people who are without adequate means of support" in enacting the old age assistance provisions of the Social Security Act.

The House of Representatives had a like concern in 1935. The report of the Committee on Ways and Means, prepared after extensive legislative hearings on the Social Security bill, contains the following illuminating statements of the purpose which the proposed legislation was to serve (74th Congress, First Session, House of Representatives Report No. 615, April 5, 1935):

"The need for legislation on the subject of social security is apparent at this time. On every hand the lack of such security is evidenced by human suffering, weakened morale, and increased public expenditures.

"This situation necessitates two complementary courses of action: We must relieve the existing distress and

should devise measures to reduce destitution and dependency in the future.

"Thus far in the depression, we have merely attempted to relieve existing distress, but the time has come for a more comprehensive and constructive attack on insecurity. The foundations of such a program are laid in the present bill." [p 3]

"Experience, both in this country and in other lands, has demonstrated that the best way to provide for old people who are dependent upon the public for support is through old-age assistance grants, more commonly called 'old-age pensions' • • • •." [p 4]

Like the Senate, the House focused on the alleviation of "human suffering" in enacting the Social Security Act.

In the original enactment of the Social Security Act, § 407 of 42 USC appeared as § 208 of Title II *in its present form.* Thus, in enacting 42 USC § 407, the 74th Congress was concerned with "old people who are dependent upon the public for support." Turning to the instant case, it is evident that the concern of Congress did not extend to decedent estates. Therefore, the concern of Congress does not extend to the estate of Jeanette Vary because said estate is not undergoing "human suffering," "distress" or "destitution." Being deceased, Jeanette Vary is no longer "dependent upon the public for support"; nor is her estate "dependent upon the public for support." Simply stated, the estate of Jeanette Vary does not fall within the scope of protection provided in 1935 by Congress in 42 USC § 407.

Said section underwent a minute change in the 1939 amendments to the Social Security Act. The First Session of the 76th Congress transposed the contents of 42 USC § 407 from § 208 of Title II to § 207 of Title II of the Social Security Act.

Under the heading "Detailed Explanation of the Bill," the Senate Committee on Finance in its Report covering the proposed 1939 amendments, made the following notation:

> "Section 207: This section is identical with section 208 of the Social Security Act which provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process."

The above-quoted matter appears on p 53 of Senate Report No. 734. In the House of Representatives Report No. 728, the heading is identical, as is the notation of the House Committee on Ways and Means for proposed § 207, which appears on p 45.

The above-mentioned reports contain a joint "History of Legislation," which indicates that the 76th Congress, like the 74th Congress, was most concerned with "relieving existing needs" and "reducing future dependency" in enacting amendments to the Social Security Act. Said history appears on p 3 of both the Senate Report and the House Report and reads in pertinent part, as follows:

> "The Social Security Act became law on August 14, 1935, after many months of deliberation in Congress. The bill was passed by an overwhelming majority in both the House and the Senate, the votes being 372 to 33 and 77 to 6, respectively. The insurance provisions of the present act [substantially as reported out by this Committee] was upheld by the United States Supreme Court in the cases of *Steward Machine Co* v *Davis* [301 U. S. 548]; *Helvering* v *Davis* [301 U. S. 619]; and *Carmichael* v *Southern Coal Co.* [301 U. S. 495].
>
> "The enactment of the Social Security Act marked a

new era, the Federal Government accepting, for the first time, responsibility for providing a systematic program of protection against economic and social hazards. Though admittedly not perfect or all inclusive the Social Security Act did embrace the broadest program for social security ever launched at one time by any government.

"Relieving and reducing dependency.—The Social Security Act aimed to attack the problem of insecurity upon two fronts: First, by providing safeguards designed to reduce future dependency and second, by improving the methods of relieving existing needs. * * *" [Bracketed material supplied]

Since the wording of 42 USC § 407 remained identical in the 1939 amendments with the Social Security Act and since the congressional purpose remained fixed upon "relieving existing needs," what was said above regarding the impact of 42 USC § 407 in 1935 is equally applicable regarding the impact of 42 USC § 407 in 1939. In short, congressional intent in enacting and in amending the Social Security Act did not encompass decedent estates. Instead, the aim of Congress was directed toward protecting living individuals from "economic hazards."

The "Legislative History" contained on p 3 of both the Senate and House reports of the 76th Congress cites the landmark case of *Helvering* v *Davis*, 301 US 619; 57 S Ct 904; 81 L Ed 1314 (1937), as upholding the constitutionality of the Social Security Act. In that decision, this Court sanctioned the intent and purpose of Congress in enacting the Social Security Act as being within the Congress' constitutional powers. The Court stated the Congress' goal as follows, 301 US at 641-643:

"Congress did not improvise a judgment when it found

> that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory groups. Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important, the *number of such persons unable to take care of themselves is growing at a threatening pace.* * * * *'Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support.'* " (Emphasis supplied, footnotes omitted).

The intent of Congress in enacting the Social Security Act was again relied on by this Court in its decision in the landmark case of *Social Security Board* v *Nierotko*, 327 US 358, 364; 66 S Ct 637; 90 L Ed 718 (1946), where the congressional intent was stated to be as follows:

> "The *purpose* of the Federal Old Age Benefits of the Social Security Act is to provide funds through contributions by employer and employee for *the decent support of elderly workmen* who have ceased to labor. * * *" [Emphasis supplied]

In yet another leading case, *United States* v *Silk*, 331 US 704, 710-711; 67 S Ct 1463; 91 L Ed 1757 (1947), the Court again relied on the aim and purpose of Congress in reaching its decision:

> "The Social Security Act of 1935 was the result of long consideration by the President and congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of government and industry for solving the problems. The principal method adopted by Congress to advance its purposes was to provide for periodic payments in the nature of annuities to the elderly and compensation to workers during periods of unemployment. • • • *This relationship between the tax sections and the benefit sections emphasizes the underlying purpose of the legislation—the protection of its beneficiaries from some of the hardships of existence.* • • •" [Emphasis supplied]

From the foregoing decisions involving the Social Security Act, it is clear that this Court has placed great reliance on the purpose of this legislation in shaping its opinions. These opinions reflect the Congressional purpose of providing "for the decent support of elderly workmen" and for "the protection of its beneficiaries from some of the hardships of existence."

Turning to the instant case, it is evident that the estate of Jeanette Vary falls outside of the scope of congressional intent as evidenced by congressional committee reports and the landmark decisions of the nation's highest court. Both legislative history and judicial precedent reflect a concern for "support" of the aged. Obviously, Jeanette Vary ceased needing "support" when she ceased living. Jeanette Vary no longer needs the protection of a statute enacted to relieve individuals from the financial "hardships of existence." It is equally obvious that the decedent estate of Jeanette Vary has no need for protection from the "hardships of existence."

A number of circuits of the United States Court of Appeals

have been faced with legal issues involving disability payments and have often relied on the intent and purpose of Congress in formulating their decisions. Illustrative is the decision in *Butler* v *Fleming*, 288 F2d 591 (CA 5, 1961), where the court made the following statement of congressional purpose as guiding its holdings: "But the purpose of much social security legislation is to ameliorate some of these rigors that life imposes." Similarly, see *Hayes* v *Celebrezze*, 311 F2d 747 (CA 5, 1963).

Also illustrative, but not exhaustive, is the decision of *Delno* v *Celebrezze*, 347 F2d 159, 161 (CA 9, 1965), where the Court relied on congressional purpose in reaching its decision and made the following observations:

> "The general *purpose* of the old-age, survivor and disability insurance provisions of Title II of the Social Security Act *is to protect workers and their dependents from the risk of loss of income* due to the insured's old age, death, or disability." [Emphasis supplied]

The Third Circuit Court of Appeals in *Coy* v *Folsom*, 228 F2d 276 (CA 3, 1955), dealt with a decedent estate and old age benefits under the Social Security Act. In denying the estate recovery the court held that, "The benefits provided for the individual by the Act were personal in nature." The full text of the Court's holding reads as follows, 228 F2d at 279:

> "Old age benefits, as was pointed out in *Social Security Board* v *Nierotko*, 1946, 317 U.S. 358, 364, 66 S.Ct. 637, 90 L.Ed. 718, were designed to provide 'for the decent support of elderly workmen who have ceased to labor' and were periodic payments in the nature of annuities.
>
> "*The benefits provided for the individual by the Act*

> *were personal in nature. Such benefits cease in the month preceding the month in which he dies.* Section 202(a), 42 U.S.C.A. § 402(a). If the insured dies before reaching the age of 65, his estate has no right to any benefits even though he may be fully insured. Moreover, survivor's benefits and a lump-sum death benefit are provided by the Act. Section 202(d-i), 42 U.S.C.A. § 402(d-i): *Old-age benefits are clearly intended to provide funds currently necessary to enable the insured to live.*" [Emphasis supplied]

From the legislative history and judicial decisions it is apparent that the underlying principle of the Social Security system is to protect its living beneficiaries from the hardships of existence. 42 USC § 407 furthers this goal by exempting social security benefits of living recipients from legal process, but it is clear the Act's purposes cannot be effectuated as to deceased recipients and the statutory exemption is therefore inapplicable to accumulated social security benefits in a decedent's estate.

B.

PHILPOTT v ESSEX COUNTY WELFARE BOARD, 409 US 413 (1973), DOES NOT CONTROL THE DISPOSITION OF THIS CASE.

Petitioner relies heavily on *Philpott* v *Essex County Welfare Board, supra,* 409 US 413 (1973), in support of the argument that the social security benefits at issue retain their exempt status even after the death of the recipient, but such reliance is misplaced. *Philpott* is readily distinguishable from the instant circumstances and significant factual differences render that case inapposite here.

In *Philpott* a New Jersey welfare recipient had executed an agreement to reimburse the State out of subsequently-acquired

property. When an award of retroactive social security benefits was received by the welfare recipient, the State attempted to reach the money since the state welfare payments would have been reduced had the recipient been receiving the social security concurrently with the welfare benefits. New Jersey attempted to reach the current deposits of the living recipient, claiming that 42 USC § 407 contained an implied exemption for such circumstances. This Court rejected that contention, *Philpott*, *supra*, 409 US at 416-417, and said that even though the state's welfare payments would have been reduced if the social security benefits had been paid in concurrent monthly amounts, New Jersey was not in a preferred position as compared to any other creditor regarding the social security benefits which were exempt from legal process. In the instant case, however, the State of Michigan is not asserting a preferred position vis-a-vis other creditors on the basis of performance of a statutory duty to take care of the needy, and is not claiming an implied exemption from 42 USC § 407.

Here Michigan is seeking reimbursement for hospital expenses by attempting to reach accumulated social security benefits of a deceased recipient, and Respondent respectfully submits that such circumstances are far different from a claim for reimbursement of excess state welfare benefits from a living social security recipient's accumulated benefits. In *Philpott*, *supra*, the welfare recipient had no other funds, and the state was in fact "performing its statutory duty to take care of the needy." A person hospitalized in a state institution who is the current beneficiary of Social Security benefits is not a "needy person" within the same frame of reference as discussed in *Philpott*, because, in addition to Social Security benefits, he may own real estate, personal property and other assets.

Perhaps the most important distinguishing fact is that the case at bar represents an attempt to obtain reimbursement from the assets of a decedent's estate while in *Philpott*, *supra*, the

reimbursement was sought from a living person. It is submitted that where Social Security benefits have been accumulated in a bank account and the beneficiary has died, his or her personal right to this bank account is not assignable voluntarily or by operation of law to heirs or to next of kin. This personal right dies with the decedent. The bank account is no longer "impressed with any trust or with the beneficiary's inalienable right thereto." Instead, it is part of the decedent's gross estate being administered by a probate court.

The Social Security Administration supports this position, as seen in their letter to Mr. Sydney Goodman, State Commissioner of Revenue, which letter is dated January 21, 1974. This letter was made a part of the record before the Michigan Supreme Court, *In re Vary Estate, supra,* 401 Mich at 350-351. In the letter, Mr. Hugh F. McKenna, Director of the Social Security Administration, states:

> "However, it is the view of the Social Security Administration that § 207 of the Social Security Act and the *Philpott* case, relied upon by the Michigan court, apply to accrued social security benefits being conserved only by (or on behalf of) a *living* beneficiary. The Social Security Administration does not read § 207 to protect the benefits of a *deceased* worker from legal process and does not agree that the *Philpott* decision must *necessarily* be read to protect the estate of a *deceased* beneficiary from the claims of creditors. • • • It is true that in *Philpott* the United States Supreme Court used very broad language • • •, but it should be borne in mind that the court had before it a case in which benefits were being conserved for a *living* beneficiary. The clear purpose of § 207 was to assure that social security benefits are available for the support of the beneficiary on whose behalf they are paid. That purpose can no longer be served after the beneficiary has died." (Emphasis in original.)

In short, the monies now being held by the co-administrators of the estate of Jeanette Vary, Deceased, are no longer considered by the Social Security Administration to be exempt social security benefits, unlike the funds in *Philpott, supra,* which this Court said ". . . retained the quality of 'moneys' within the purview of § 407." *Philpott, supra,* 409 US at 416.

The distinction between the instant case and *Philpott, supra,* is that upon the death of Jeanette Vary, these funds lost the quality of "monies" which would be protected by the non-alienation language of § 407.

An attempt to impose the alienation limitations of the Social Security Act on decedent's assets was rejected in *Beers* v *Federal Security Administrator,* 172 F2d 34, 36 (CA 2, 1949), which held as follows:

> "Nor is the argument based on § 407 persuasive. This section, entitled 'Assignment,' reads, as follows:
>
> " 'The right of any person to any future payment under sections 401-409 of this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under said sections shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.'
>
> "This prohibition against transfer or assignment relates to the right to 'any future payment' of social security benefits; it does not, in our opinion, relate to checks issued for past installments. If it did, the payee of the check would be unable to negotiate it by endorsement, which concededly he can do. We think the section is intended to preclude a person entitled to benefits under sections 401 to 409 from transferring his right before, but

> not after, the Administrator has recognized it. *Hence checks issued to him pursuant to certification are freely transferable by him, and on his death pass by operation of law to his executor or administrator.*" [Emphasis supplied]

In the *Beers* case, *supra*, the recipient of Social Security payments at the time of his death was in possession of ten unendorsed and unnegotiated checks. The Court held specifically that issued Social Security checks pass on the death of the recipient to the administrator of his estate "by operation of law." Since the Social Security Act contains no provision providing for the passage of issued Social Security benefits to the administrator, the "operation of law" reference in *Beers, supra*, can be only to state statutes of descent and distribution. The Michigan Supreme Court so read the United States Court of Appeals' decision.

Petitioners contend (Petition, pp 14-15) that *Philpott, supra*, overruled *sub silentio* the *Beers* case, *supra*. Respondent submits however that *Philpott* did not address, either directly or indirectly, the question whether Social Security benefits pass to the estate of the decedent-recipient because *Philpott*, unlike *Beers*, did not involve a deceased recipient and a decedent estate. Because of this determinative factual difference, Petitioners' contention that *Philpott* overruled *Beers* is without merit and the *Beers* rationale is applicable to the instant case.

Petitioners contend that § 407 makes no distinction between living beneficiaries or their estates and go on to argue that the monies now on deposit have retained their exempt identity as Social Security funds which may not be reached under the broad impact of *Philpott, supra*. If this were the case, the Administrator of Social Security would arguably be entitled to make a formal demand upon the co-administrators of this estate for the return of these funds as they are no longer

needed for the care, support and maintenance of the beneficiary who is now deceased. This right of redemption on the part of the Social Security Administration no doubt would be exercised in every case where the identity of monies deposited in a bank account could be clearly established as Social Security benefits. In point of fact, such right has never been exercised because these monies clearly lose their separate identity upon the death of the beneficiary. Respondent contends that these monies are personal property, the same as any other bank account inventoried in the decedent estate and, as such, are subject to the claim of creditors and are not affected by the language of 42 USC § 407.

Courts in several states have reached this result and have declined to extend to heirs and legatees the protections personally enjoyed by recipients. For example, in *State* v *Monaco*, 81 NJ Super 448, 195 A2d 910 (1963), a New Jersey Court was faced with the question of whether the exemption contained in 38 USC § 3101 survived the death of the beneficiary of Veterans' benefits. The Court concluded that it did not, and that the veteran's pension lost its identity as exempt monies. The Court stated, 195 A2d at 912:

> "The decedent herein received considerable care and treatment from the State of New Jersey. A debt resulted therefrom. However, because of the moneys received by the decedent in the form of United States veterans' pension payments, protection against this obligation has been afforded. This Court concludes that these pension funds lose their identity as pension moneys on the death of the veteran and that the exemption of such moneys from the claims of creditors is thereupon lost."

See also, *In re Buxton's Estate*, 246 Wis 97, 16 NW2d 399 (1944); *State* v *Wendt*, 94 Ohio App 440, 116 NE2d 30 (1953).

CONCLUSION AND RELIEF SOUGHT

Respondent submits that the Petition presents no genuine Supremacy Clause issue, and because the Michigan statute apparently challenged by Petitioner has been repealed, no other issue of sufficient impact or importance is presented to warrant review by this Court. However, even if it is determined that this case presents an important issue concerning the interpretation of 42 USC § 407, Respondent submits that the Michigan Supreme Court's interpretation is clearly correct. Although 42 USC § 407 exempts social security benefits from legal process while the recipient is alive, that statute's protections are personal in nature and cease upon the death of the recipient. At that time accumulated social security benefits become a general, non-exempt asset, similar to any other asset in the estate and subject to the claims of creditors. This position gives full effect to the purposes underlying the Social Security Act in general and 42 USC § 407 in particular and is consistent with prior judicial decisions interpreting the Act.

For the foregoing reasons, it is respectfully submitted that the Petition for a writ of Certiorari should be denied.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
E. David Brockman
Assistant Attorneys General

Dated: January 27, 1978